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Kristen M. Geraci

Applicant	: Michael L. Obradovich	Confirmation No. 9904
Application No.	: 09/838,491	
Filed	: April 19, 2001	
Title	: CENTRALIZED CONTROL AND MANAGEMENT SYSTEM FOR AUTOMOBILES	
Grp./Div.	: 2173	
Examiner	: Cao H. Nguyen	
Docket No.	: 56019/C685	

SUBMISSION OF A NEW APPELLANT'S BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Post Office Box 7068
Pasadena, CA 91109-7068
August 24, 2006

Commissioner:

Enclosed for filing is a new Appellant's Brief for this application in response to a Notification of Non-Compliant Appeal Brief mailed July 24, 2006.

An oral hearing of the appeal is requested.

The Commissioner is hereby authorized to charge any further fees under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 03-1728. Please show our docket number with any charge or credit to our Deposit Account. **A copy of this letter is enclosed.**

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

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APPELLANT'S BRIEF ON APPEAL
Michael L. Obradovich
Serial No. 09/838,491
Filed August 24, 2006

Case C685:56019

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Title	:	CENTRALIZED CONTROL AND MANAGEMENT SYSTEM FOR AUTOMOBILES	
Grp./Div.	:	2173	
Examiner	:	Cao H. Nguyen	
Customer No.	:	56317	
Docket No.	:	56019/C685	

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
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Commissioner:

This is an appeal to the Board of Patent Appeals and Interferences from the Final Rejection, dated December 29, 2005, in which Claims 21-29, 41-48, and 59-62 of the above-referenced application stand rejected.

I. REAL PARTY IN INTEREST

The real party in interest is:

AMERICAN CALCAR INC.

II. RELATED APPEALS AND INTERFERENCES

There are no related Appeals and/or Interferences.

III. STATUS OF CLAIMS

Claims 1-20, 30-40 and 49-58 are cancelled; and

Claims 21-29, 41-48 and 59-62 are under appeal.

VI. STATUS OF AMENDMENTS

A Final Office Action was mailed on December 29, 2005 in which the Examiner has twice rejected applicant's claims as being obvious over the same two references. An advisory Action was mailed on April 13, 2006, denying entry of applicant's Amendment After Final Action which would otherwise improve the form of the claims, but which is not necessary to overcome the obviousness rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 21 is directed to a system for use in a vehicle that has an interface for providing a set of indicators. *See Specification at page 7, line 22-24 and FIG. 2.* The indicators indicate a group of information sources outside the vehicle being associated with a location. *See Specification at page 12, line 21 to page 14, line 24 and FIGS. 6 and 7; Specification at page 42, line 10 to page 44, line 16 and FIG. 18* . Each indicator is selectable to receive signals from the information source indicated by the indicator. *See Specification at page 14, line 25 to page 15, line 7; FIG. 7; page 15, line 24-32; page 43, line 27 to page 44, line 7; FIG. 18.* The system has

a processor for determining whether the vehicle is within a predetermined distance from a second location. *See FIG. 1; Specification at page 14, lines21-24; page 16, lines 15-18; page 42, lines 17-19; page 43, lines 3-7.* A second set of indicators indicate a second group of information sources associated with the second location. The second group of information sources are provided when it is determined that the vehicle is within the predetermined distance from the second location. *See FIGS. 6 and 7; Specification at page 14, lines 8-24; page 15, lines 9-31; page 42, lines 10-21; page 42, line 29 to page 43, line 7; FIG. 18.*

Independent claim 41 is directed to a method for use in a system in a vehicle. The method includes providing a set of indicators for indicating a group of information sources outside the vehicle. *See Specification at page 12, line 21 to page 14, line 24 and FIGS. 6 and 7; Specification at page 42, line 10 to page 44, line 16 and FIG. 18.* The group of information sources is associated with a location and each indicator is selectable to receive signals from the information source indicated by the indicator. *See Specification at page 14, line 25 to page 15, line 7; FIG. 7; page 15, line 24-32; page 43, line 27 to page 44, line 7; FIG. 18.* The method determines whether the vehicle is within a predetermined distance from a second location. *See FIG. 1; Specification at page 14, lines21-24; page 16, lines 15-18; page 42, lines 17-19; page 43, lines 3-7.* The method also provides a second set of indicators indicating a second group of information sources which is associated with the second location when it is determined that the vehicle is within the predetermined distance from the second location. *See FIGS. 6 and 7; Specification at page 14, lines 8-24; page 15, lines 9-31; page 42, lines 10-21; page 42, line 29 to page 43, line 7; FIG. 18.*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 21-29, 41-48, and 59-62 were rejected under 35 U.S.C. 103 as being unpatentable over U.S. Patent No. 5,732,338 issued March 24, 1998 to Schwob (hereinafter "Schwob") in view of R. Jurgen, "Broadcasting with Digital Audio," *IEEE Spectrum*, March 1996, pp. 52-59 (hereinafter "Jurgen").

VII. ARGUMENTS

The Examiner Has Failed to Establish a *Prima Facie* Case of Obviousness in Rejecting claims 21-29, 41-48 and 59-62 Over Schwob in View of Jurgen

Schwob discloses a radio receiver capable of receiving audio content from a broadcasting station, and data from a VHF/FM subcarrier. The data is used to update a database in the receiver which is used to identify received broadcasting stations, and search for stations according to user-chosen attributes and other data. The database update may be automatic wherein the receiver upon being turned on is immediately tuned to the closest VHF/FM station (the "data provider"). The update may be semi-automatic wherein an internal clock is used to prompt the receiver to tune to the data provider at specified times. The update may be manual wherein the user is required to press a dedicated key (220) on the front panel. Col. 24, line 27 *et seq.*, Abstract of Schwob.

Jurgen describes a technique for digital audio broadcast (DAB), and discloses the following two scenarios in which such a technique is applied:

> [A] DAB car radio will monitor signal strengths and switch automatically from a fading signal to a stronger one. If the driver selects the broadcasting station CBS, for example, the radio will make use of CBS signals from any transmitter along that broadcaster's network, regardless of the exact frequency in the coverage area the driver happens to be in.
>
> If a signal from one transmitter disappears suddenly, as is common with digital signals, the radio will then retune itself ... to receive signals from another CBS transmitter down the pike....
>
> In another scenario, a driver might be more concerned about the type of programming he receives, rather than maintaining "brand loyalty" to one network. If the driver selects "Oldies," the radio will automatically switch from one station broadcasting that type of programming to another doing the same. Using this feature, known as a single frequency network (SFN), all the transmitters in a network will operate on the same frequency and broadcast the same programs.

Jurgen at page 54 (emphasis added).

The Examiner rejected claims 21-29, 41-48, and 59-62 under 35 U.S.C. 103 (a) as being allegedly obvious over Schwob in view of Jurgen. These rejections are improper for at least two following reasons:

1) There would have been no motivation to combine the cited references to solve the problem which the claimed invention was set out to solve.
2) The combination of the cited references still does not produce the claimed invention.

(a) The Examiner's Combination of Schwob and Jurgen is Improper

The Examiner has not identified any evidence of a motivation to combine Schwob and Jurgen to solve the problem which the claimed invention was set out to solve. Although an examiner may formulate an obviousness rejection of a claimed invention based on a combination of prior art references, the examiner is required to provide clear and particular evidence of a suggestion, teaching or motivation to combine such references:

> [E]vidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases from the nature of the problem to be solved, although "the suggestion more often comes from the teachings of the pertinent references." The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."

In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999) (emphasis added, citations omitted).

In the Final Office Action, the Examiner postulated use of the Schwob receiver "in combination of [Jurgen's] GPS." Page 6 of the Final Office Action (Appendix B). The Examiner went on to make a broad conclusory statement that "one would have been motivated to make such a combination in order to provide a means to update a receiver-integrated database containing station identification and station attribute information so that data update can be done automatically through VHF/FM subcarrier data transmission as soon as data change is known and as easily as practicle (sic)." *Id.*

However, nowhere does Jurgen or Schwob, individually or in combination, teach or suggest use of GPS to update anything of a radio receiver whatsoever. In fact, Jurgen and

Schwob teach away from the motivation conjured up by the Examiner. Jurgen teaches use of a DAB radio, apart from being a sound box, as a GPS aid to improve the GPS locating capability. Specifically, Jurgen teaches that "[t]he digital radio may in the future be programmable to correlate and compare signals from the global positioning system [GPS] to pinpoint a driver's exact location." Jurgen at page 55. Moreover, Schwob describes a radio receiver capable of receiving current location information within a received data stream, and determining the current location of the receiver. *See* col. 19, line 35 *et seq.*, Fig. 14 of Schwob. If anything, one skilled in the art may have been motivated to combine Schwob and Jurgen to solve the problem of a deficiency of GPS in pinpointing the location of a vehicle or a radio receiver, but certainly not the problem which the claimed invention was set out to solve (*supra* Section V). Thus, the Examiner's use of a specious motivation to combine Schwob and Jurgen, not to mention broad conclusory statements, to support his attempted hindsight reconstruction of the claimed invention is improper.

(b) The Examiner's Combination of Schwob and Jurgen
Does Not Produce the Claimed Invention

As admitted by the Examiner in the Final Office Action, Schwob at a minimum fails to teach a processor for "determining whether the vehicle is within a predetermined distance from a second location, a second set of indicators indicating a second group of information sources being provided when it is determined that the vehicle is within the predetermined distance from the second location, the second group of information sources being associated with the second location," as claim 21 recites. Appendix B, page 2. Nor does Jurgen teach or suggest the quoted claim limitations notwithstanding the Examiner's assertion that Fig. 2 of Jurgen shows such limitations. *See* Appendix B, page 5. The Examiner mischaracterized Fig. 2 as a demonstration of Jurgen's "teach[ing that] the digital radio may be programmable to correlate and comparable (sic) signals from the global positioning system to pinpoint a driver's location calculate a car's location, transmitting the coordinates of transmission sites and resulting distance difference by GPS location data." *Id.* The mischaracterization of Fig. 2 aside, the Jurgen teaching as propounded by the Examiner does not even meet the above-quoted claim limitations. Thus,

even assuming *arguendo* that it is proper to combine Schwob and Jurgen, the combination of these references still does not produce the claimed invention.

Fig. 2 of Jurgen illustrates use of the aforementioned SFN whereby a driver can have a receiver "automatically tune in to the strongest signal of particular transmitter wherever she may happen to be on her itinerary." Caption of Fig. 2 of Jurgen (emphasis added). Thus, in fact, Jurgen teaches away from the claimed invention by automatically switching from one transmitter (or station) whose signal is fading to another transmitter (or station) having a stronger signal, thereby obviating the need of providing for selection "a second set of indicators indicating a second group of information sources," associated with a second location "when it is determined that the vehicle is within the predetermined distance from the second location," as claims 21 and 41 recite. As such, claims 21 and 41, together with their dependent claims, are patentable over Schwob in view of Jurgen.

The Examiner also mischaracterized the above-quoted claim limitations as an advantage of the invention. The Examiner cited *Ex parte Obiaya*, 227 U.S.P.Q. 58 (Bd. Pat. App & Inter. 1985) for the proposition that "the fact that the applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious." Exhibit B, page 5. However, the Examiner ignores the fact that in the *Obiaya* case, before the Board made such a ruling with respect to an advantage attendant to an invention, it had made the threshold finding that "the references clearly disclose each of the features [of the claimed invention] in similar apparatus such that one skilled in this art having these references available would have found the claimed invention to be obvious." *Obiaya* at 60 (emphases added).

Here, the above-quoted claim limitations are features of the invention, as opposed to being an advantage attendant to the invention as postulated by the Examiner. As discussed before, these claim features are not disclosed anywhere, let alone clearly, in the Schwob and/or Jurgen reference, and do not flow naturally from following the suggestion of the prior art anyhow. As such, the Examiner's position is totally untenable.

Conclusion

In view of the foregoing arguments, it is clear that Schwob and Jurgen, taken singly or in combination, do not render obvious the invention set forth in Appellant's claims. Appellant submits that the Examiner is in error in the characterization of the references. Accordingly, it is respectfully requested that the rejections of Appellant's claims under 35 U.S.C. § 103 be reversed.

Respectfully submitted,

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SM/rmw

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VIII. CLAIMS APPENDIX

21. A system for use in a vehicle comprising:

an interface for providing a set of indicators for indicating a group of information sources outside the vehicle, the group of information sources being associated with a location, each indicator being selectable to receive signals from the information source indicated by the indicator; and

a processor for determining whether the vehicle is within a predetermined distance from a second location, a second set of indicators indicating a second group of information sources being provided when it is determined that the vehicle is within the predetermined distance from the second location, the second group of information sources being associated with the second location.

22. The system of claim 21 wherein at least one of the information sources includes a radio station.

23. The system of claim 21 wherein at least one of the information sources includes a television station.

24. The system of claim 21 wherein at least one of the indicators is selectable by voice command.

25. The system of claim 21 wherein the interface includes a display.

26. The system of claim 25 wherein at least one of the indicators when selected is highlighted on the display.

27. The system of claim 21 wherein the processor determines whether the vehicle is within the predetermined distance from the second location by comparing a global positioning

system (GPS) measurement identifying a current location of the vehicle with a second GPS measurement identifying the second location.

28. The system of claim 21 wherein at least one of the indicators includes an icon.

29. The system of claim 28 wherein the at least one indicator is selectable by pointing and clicking at the icon.

41. A method for use in a system in a vehicle comprising:

providing a set of indicators for indicating a group of information sources outside the vehicle, the group of information sources being associated with a location, each indicator being selectable to receive signals from the information source indicated by the indicator;

determining whether the vehicle is within a predetermined distance from a second location; and

providing a second set of indicators indicating a second group of information sources which is associated with the second location when it is determined that the vehicle is within the predetermined distance from the second location.

42. The method of claim 41 wherein at least one of the information sources includes a radio station.

43. The method of claim 41 wherein at least one of the information sources includes a television station.

44. The method of claim 41 wherein at least one of the indicators is selectable by voice command.

45. The method of claim 41 wherein at least one of the indicators is provided on a display in the system and the at least one indicator when selected is highlighted on the display.

46. The method of claim 41 wherein a GPS measurement identifying a current location of the vehicle is compared with a second GPS measurement identifying the second location in determining whether the vehicle is within the predetermined distance from the second location.

47. The method of claim 41 wherein at least one of the indicators includes an icon.

48. The method of claim 47 wherein the at least one indicator is selectable by pointing and clicking at the icon.

59. The system of claim 21 wherein at least one of the information sources includes a video source.

60. The system of claim 21 wherein at least one of the information sources includes an audio source.

61. The method of claim 41 wherein at least one of the information sources includes a video source.

62. The method of claim 41 wherein at least one of the information sources includes an audio source.

IX. EVIDENCE APPENDIX

(NONE)

X. RELATED PROCEEDINGS APPENDIX

(NONE)